

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 15 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SUDHIRBHAI AMRUTLAL SHAH

Versus

STATE OF GUJARAT

Appearance:

MR HM PARIKH for Petitioner

MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/06/2001

ORAL JUDGEMENT

#. Heard Mr.H.M.Parikh, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned APP for respondent - State. In the present petition, the petitioner has challenged two orders viz. order dated

16th June, 1994 passed by the Deputy Conservator of Forest, Rajpipla and order passed by the Additional Sessions Judge at Bharuch in Criminal Appeal No. 18 of 1994 dated 14th November, 1995. This Court has issued RULE and interim stay has been granted by order dated 10th January, 1996 against execution and implementation of the impugned orders and in pursuance of the interim order passed by this Court, possession of the tempo is with the petitioner.

#. According to the petitioner, he is the owner of the vehicle known as tempo bearing registration GJ-16T-7308 and the said vehicle was plying for the carriage of goods. According to the petitioner, petitioner had purchased the said vehicle on 14-11-1991, thereafter its body was constructed at Halol and the actual business was started in the said tempo from 12th December, 1991. It is also submitted by the petitioner that he had purchased the said tempo by obtaining a loan from Co-operative Bank of Rajpipla. According to the petitioner, the driver of the petitioner loaded timber on 24-12-1991 and it was to be transported to Baroda. A permit was also issued by the Forest Department and the driver was in possession of the said permit along with the agent of the owner of the goods. The said tempo was inspected at Vega by the officers of the second respondent and it was found that the goods transported in the tempo were tallying with the goods mentioned in the permit. It was also case of the present petitioner that the permit was for 235 pieces of woods admeasuring 0.908 cubic meters while the goods, which were found in the tempo were 0.967 cubic meters and there were only of 135 pieces. The goods transport in the said tempo were not dry and it was wet timber. Under these circumstances, the tempo was seized by the officer of the second respondent and proceedings were started. The seller of the goods Bhagyalaxmi Saw Mill and purchaser of the goods Juberbhai Saifuddin and Bharatbhai Madhubhai Vasava were held guilty and fined Rs.2000/- and Rs.1000/- respectively. Thereafter, notice under Section 61 was issued to the petitioner for the confiscation of the vehicle in question. The petitioner has submitted reply to the said notice and stated that the driver has informed that he has to carry the wooden pieces from Rajpipla to Baroda for which the rent was fixed at Rs.500/- and the transporter of the goods was also willing to give the permit for same and as the rent was reasonable, the petitioner had permitted the driver to transport the said goods. The son of the petitioner had also seen the permit and it was a genuine one and he had also permitted to transport the said goods in the tempo in question. According to the petitioner, there was some

misunderstanding about writing of the pieces as the permit mentioned 235 pieces while in fact, the transported goods were 135 pieces. According to the petitioner, if the real calculated volume of the goods in that case, it would be clear that the permit mentioned at 0.908 cubic meters while the actual transported goods were 0.967 cubic meters. Therefore, according to the petitioner, there was difference of 100 pieces, in that case, the volume of the goods which have been transported would be much higher in the permit. However, the second respondent by his judgment and order dated 16th June, 1994 was pleased to confiscate the vehicle- tempo bearing registration GJ-16-T-7308. The said order was challenged by the present petitioner before the Additional Sessions Judge, Bharuch by preferring Criminal Appeal No. 18 / 1994, wherein the appeal has been dismissed by the Sessions Court by order dated 14th November, 1995. Mr.H.M.Parikh, learned advocate has submitted that on page 57 of the petitioner, observations made by the Additional Sessions Judge that there was some negligence on the part of the petitioner's son Tusharbhai or the driver who had driven the vehicle in question at the time when the incident was occurred. Mr.Parikh has also submitted that the Deputy Conservator of Forest, Rajpipala has passed the order against the owner of Bhagyalaxmi Saw Mill, tempo driver - Vitthalbhai Nagjibhai Vasava, cleaner - Sanjaybhai Kalubhai Bhoi, Juberbhai Saifudin Cinemawala and according to him, these are sufficient orders in respect of incident which had occurred and considering all the aspects of the matter, sufficient punishment was imposed by the Deputy Conservator of Forest and under that circumstances, there is no need to confiscate the tempo in question. However, the tempo in question has been confiscated by the concerned authority only on the ground that this vehicle was used for illegal activity but in fact, considering the undisputed fact, the driver was already having the permit at the time of loading the timber in the tempo and that permit was genuine one so also considering the observations made by the Additional Sessions Judge that only on account of some negligence on the part of the son of the petitioner and driver of the vehicle in question, said vehicle - tempo in question has been confiscated.

#. I have gone through the impugned orders passed by the Deputy Conservator of the Forest, Rajpipla and the order passed by the Additional Sessions Judge, Bharuch dated 14th November, 1995, according to my opinion, by these orders, an apparent errors are committed on the face of the record. When the concerned persons involved in the said incident have already been sufficiently punished by

taking care of all the aspects of the matter, then there is no need to confiscate the vehicle in question, though which was in fact used in such incident. The petitioner was unaware as to illegality committed by the driver or any other person and therefore, considering all the aspects of the matter, according to my opinion, both the impugned orders in respect of confiscation dated 16th June, 1994 and 14th November, 1995 qua petitioner only are hereby quashed and set aside. Rule is made absolute accordingly.

Date : 12-6-2001 [H.K.Rathod, J.]

#kailash#